

§ 954.20

submitted all posthearing material. The initial decision shall become the final agency decision unless it is appealed.

(c) The initial decision shall include findings upon all material issues of fact and law presented on the record and the reasons for those findings.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.20 Appeals.

(a) A party may appeal to the Judicial Officer from an initial decision by filing exceptions in a brief on appeal within 15 days from the receipt of a written or oral initial decision.

(b) The time for the filing of the reply brief is 10 days after receipt of the appeal brief. No additional briefs shall be received unless requested by the Judicial Officer.

(c) Appeal briefs shall contain the following matter in the order indicated:

(1) A subject index of the matters presented with page references;

(2) A table of cases alphabetically arranged;

(3) A list of statutes and texts cited with page references;

(4) A concise abstract or statement of the case;

(5) Numbered exceptions to the findings and conclusions of the presiding officer and the reasons for the exceptions.

(d) Reply briefs shall contain paragraphs (c) (1), (2), and (3) of this section and the reasons for opposing the exceptions.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973]

§ 954.21 Motion for reconsideration.

Within 10 days from the date thereof, or such longer period as may be fixed by the Judicial Officer, either party may file a motion for reconsideration of a final Agency decision.

§ 954.22 Continuances.

For good cause shown, continuances or extensions may be granted by the presiding officer. Similar action may be taken by the Judicial Officer when the proceeding is on appeal.

39 CFR Ch. I (7–1–04 Edition)

§ 954.23 Computation of time.

A designated period of time under these rules excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or holiday, in which event the period runs until the close of business on the next working day.

§ 954.24 Official record.

The pleadings, orders, exhibits, transcript of testimony, briefs, decisions and other documents filed in the proceeding constitute the official record of the proceeding.

§ 954.25 Public information.

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial and final Agency decisions. The Recorder of the Postal Service maintains a complete official record of every proceeding. A person may examine a record upon authorization by the Judicial Officer.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.26 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

PART 955—RULES OF PRACTICE BEFORE THE BOARD OF CONTRACT APPEALS

Sec.

955.1 Jurisdiction, procedure, representation of parties.

PRELIMINARY PROCEDURES

955.2 Appeals, how taken.

955.3 Notice of appeal, contents of.

955.4 Forwarding of appeals.

955.5 Preparation, contents, organization, forwarding, and status of appeal file.

955.6 Dismissal for lack of jurisdiction.

955.7 Pleadings.

955.8 Amendments of pleadings or record.

955.9 Hearing election.

955.10 Prehearing briefs.

955.11 Prehearing or presubmission conference.

955.12 Submission without a hearing.

United States Postal Service

§ 955.1

- 955.13 Optional small claims (expedited) and accelerated procedures.
- 955.14 Settling the record.
- 955.15 Discovery—depositions.
- 955.16 Interrogatories to parties, admission of facts, and production and inspection of documents.
- 955.17 Service of papers.

Hearings

- 955.18 Where and when held.
- 955.19 Notice of hearings.
- 955.20 Unexcused absence of a party.
- 955.21 Nature of hearings.
- 955.22 Examination of witnesses.
- 955.23 Copies of papers.
- 955.24 Posthearing briefs.
- 955.25 Transcript of proceedings.
- 955.26 Withdrawal of exhibits.

Representation

- 955.27 The appellant.
- 955.28 The respondent.

Decisions

- 955.29 Decisions.

Motion for Reconsideration

- 955.30 Motion for reconsideration.

Dismissals

- 955.31 Dismissal without prejudice.
- 955.32 Dismissal for failure to prosecute.

Ex Parte Communications

- 955.33 Ex parte communications.

Sanctions

- 955.34 Sanctions.

Effective Date and Applicability

- 955.35 Subpoenas.
- 955.36 Effective dates and applicability.

AUTHORITY: 39 U.S.C. 204, 401; 41 U.S.C. 607, 608.

SOURCE: 41 FR 7408, Feb. 18, 1976, unless otherwise noted.

§ 955.1 Jurisdiction, procedure, representation of parties.

(a) *Jurisdiction for considering appeals.* The U.S. Postal Service Board of Contract Appeals (Board) shall consider and determine appeals from decisions of contracting officers arising under contracts which contain provisions requiring the determination of appeals by the Postmaster General or his duly authorized representative or board. In addition the Board shall have jurisdiction over other matters assigned to it by the Postmaster General. The Board

has authority to determine appeals falling within the scope of its jurisdiction as fully and finally as might the Postmaster General himself.

(b) *Organization and location of the Board.* (1) The Board is located in Arlington, VA and its mailing address is 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078.

(2) The Board consists of the Judicial Officer as Chairman, the Associate Judicial Officer as Vice Chairman, and the Administrative Judges of the Postal Service. All members of the Board shall be attorneys at law duly licensed by any state, commonwealth, territory, or the District of Columbia. In general, the appeals are assigned to a panel of at least three members of the Board. The decision of a majority of the panel constitutes the decision of the Board.

(c) *Decisions on questions of law.* When an appeal is taken pursuant to a Disputes Clause in a contract which limits appeals to disputes concerning questions of fact, the Board may, in its discretion, hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. In the consideration of an appeal, should it appear that a claim is involved which is not cognizable under the terms of the contract, the Board may make findings of fact with respect to such a claim without expressing an opinion on the question of liability.

(d) *Board of contract appeals procedure—(1) Rules.* Appeals referred to the Board are handled in accordance with the rules of the Board.

(2) *Administration and interpretation of rules.* Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(3) *Preliminary procedures.* Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise.

(4) *Time, computation, and extensions.* (i) All time limitations specified for

§ 955.2

various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

(ii) Except as otherwise provided by law, in computing any period of time prescribed by these rules or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday in which event the period shall run to the end of the next business day.

(iii) Requests for extensions of time from either party shall be made in writing stating good cause therefor.

(5) Place of filings. Unless the Board otherwise directs, all notices of appeal, pleadings and other communications shall be filed with the Recorder of the Board at its office at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078.

(e) *Representation of parties.* Whenever reference is made to contractor, appellant, contracting officer, respondent and parties, this shall include respective counsel for the parties, as soon as appropriate notices of appearance have been filed with the Board.

[41 FR 7408, Feb. 18, 1976, as amended at 43 FR 60275, Dec. 27, 1978; 60 FR 57938, Nov. 24, 1995; 63 FR 66050, Dec. 1, 1998]

PRELIMINARY PROCEDURES

§ 955.2 Appeals, how taken.

Notice of an appeal must be in writing, and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

§ 955.3 Notice of appeal, contents of.

A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number), the department and agency or bureau cognizant of the dispute, and the decision from which the appeal is

39 CFR Ch. I (7-1-04 Edition)

taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in § 955.7 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

§ 955.4 Forwarding of appeals.

When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor and contracting officer will be promptly advised of its receipt and the contractor will be furnished a copy of these rules.

§ 955.5 Preparation, contents, organization, forwarding, and status of appeal file.

(a) *Duties of contracting officer.* Within 30 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board through Postal Service counsel an appeal file consisting of all documents pertinent to the appeal, including:

- (1) The decision and findings of fact from which appeal is taken;
- (2) The contract including specifications and pertinent amendments, plans and drawings;
- (3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;
- (4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and
- (5) Any additional information considered pertinent.

Within the same time above specified Postal Service counsel shall furnish